

BEFORE THE SPEECH AND HEARING SERVICES LICENSURE BOARD

STATE OF IDAHO

In the Matter of the License of:)	
)	Case No. SHS-2009-1
MARCIA I. HOEG,)	
License No. HA-382,)	STIPULATION AND
)	CONSENT ORDER
Respondent.)	
_____)	

WHEREAS, information has been received by the Idaho State Speech and Hearing Services Licensure Board (the "Board") that constitutes sufficient grounds for the initiation of an administrative action against Marcia I. Hoeg ("Respondent"); and

WHEREAS, the parties mutually agree to settle the matter in an expeditious manner in lieu of administrative hearings before the Board; now, therefore,

IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this matter shall be settled and resolved upon the following terms:

A. Stipulated Facts and Law

A.1. The Board regulates the practice of hearing aid dealing and fitting in the State of Idaho in accordance with title 54, chapter 29, Idaho Code.

A.2. The Board has issued License No. HA-382 to Respondent. Respondent's license expired on May 7, 2007, and Respondent's license was canceled as of May 8, 2007. Respondent has not renewed her license; however, pursuant to Idaho Code § 67-2614, Respondent retains the right to renew her license for up to five (5) years after cancellation by paying the required fees.

A.3. On or about August 26, 2003, Respondent sold hearing aids to H.H., and H.H. took delivery of the hearing aids in September 2003. After a short period of time the aids failed to function properly, and H.H. returned the aids to Respondent. Respondent never returned the aids to H.H. On January 11, 2005, after being contacted by a Bureau of Occupational Licenses investigator, Respondent refunded to H.H. the

entire purchase price of the aids. Respondent could not, however, provide documentation evidencing that Respondent performed follow-up sound field testing on H.H.

A.4. On or about July 14, 2005, Respondent sold hearing aids to L.D., and L.D. took delivery of the hearing aids in August 2005. Respondent made several attempts to adjust the aids, and on August 31, 2005, L.D. left a message with Respondent that he would like a refund. Respondent did not return L.D.'s calls until September 9, 2005. On or about September 14, 2005, Respondent took new ear molds of L.D. and told L.D. that the hearing aids would be back in approximately 10 days. L.D. made numerous calls to Respondent in October and November until Respondent finally called back on or about November 10, 2005, when she apologized and informed L.D. that she would refund his money because it was the "right thing to do." L.D. never received a refund from Respondent.

A.5. On April 11, 2007, Respondent informed the investigator that she did owe L.D. a full refund. In addition, Respondent was unable to provide documentation evidencing that Respondent performed follow-up sound field testing on L.D.

A.6. The allegations of Paragraphs A.3 through A.5, if proven, would violate the laws and rules governing the practice of hearing aid dealing and fitting, specifically Idaho Code §§ 54-2912(b)(5) (2003) (engaging in the practice of hearing aid dealing or fitting to a person who has not been given all necessary tests), 54-2912(b)(11) (failing to provide a refund pursuant to the terms of the written contract) and 54-2912(b)(13) (violations of the Hearing Aid Dealers and Fitters Act), and Board Rule (IDAPA 24.06.01) 450.03 (2003) (consumer must be tested in both aided and unaided condition). Violations of these laws and rules constitute grounds for disciplinary action against Respondent's license to practice hearing aid dealing and fitting in the State of Idaho.

B. Waiver of Procedural Rights

I, Marcia I. Hoeg, by affixing my signature hereto, acknowledge that:

B.1. I have read, understand and admit the allegations pending before the Board,

as stated in Section A, Paragraphs A.3 through A.5. I further understand that these allegations constitute cause for disciplinary action upon my license to practice as a hearing aid dealer and fitter in the State of Idaho.

B.2. I understand that I have the right to a full and complete hearing; the right to confront and cross-examine witnesses; the right to present evidence or to call witnesses, or to testify myself; the right to reconsideration of the Board's orders; the right to judicial review of the Board's orders; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of hearing aid dealing and fitting in the State of Idaho. I hereby freely and voluntarily waive these rights in order to enter into this Stipulation as a resolution of the pending allegations.

B.3. I understand that in signing this Stipulation I am enabling the Board to impose disciplinary action upon my license without further process.

C. Stipulated Discipline

C.1. Respondent's renewal rights are revoked effective immediately.

C.2. Respondent shall pay investigative costs and attorney fees incurred by the Board in this matter in the amount of Six Hundred Twenty-Five and No/100 Dollars (\$625.00) within sixty (60) days of the entry of the Board's Order.

C.3. If Respondent applies for licensure after the revoked 5-year renewal period has passed, Respondent shall first appear before the Board to address the allegations in Section A above.

C.4. The violation of any of the terms of this Stipulation by Respondent may warrant further Board action. The Board therefore retains jurisdiction over this proceeding until all matters are finally resolved as set forth in this Stipulation.

D. Presentation of Stipulation to Board

D.1. The Board's prosecutor shall present this Stipulation to the Board with a recommendation for approval.

D.2. The Board may accept, modify with Respondent's approval, or reject this

Stipulation. If the Board rejects the Stipulation, an administrative Complaint may be filed with the Board. Respondent waives any right Respondent may have to challenge the Board's impartiality to hear the allegations in the administrative Complaint based on the fact that the Board has considered and rejected this Stipulation. Respondent does not waive any other rights regarding challenges to Board members.

D.3. If the Board rejects this Stipulation then, except for Respondent's waiver set forth in Paragraph D.2., this Stipulation shall be regarded as null and void, and admissions in this Stipulation and negotiations preceding the signing of this Stipulation will not be admissible at any subsequent disciplinary hearing.

D.4. Except for Paragraph D.2. which becomes effective when Respondent signs this Stipulation, this Stipulation shall not become effective until it has been approved by a majority of the Board and a Board member signs the attached Order.

E. Violation of Stipulation and Consent Order

E.1. If Respondent violates this Stipulation and Consent Order, the violation shall be considered grounds for additional discipline and the Board may impose additional discipline pursuant to the following procedure:

a. The Chief of the Bureau of Occupational Licenses shall schedule a hearing before the Board to assess whether Respondent has violated this Stipulation and Consent Order. The Chief shall also serve notice of the hearing and charges to Respondent and to Respondent's attorney, if any. Within fourteen (14) days after the notice of the hearing and charges is served, Respondent may submit a response to the allegations. If Respondent does not submit a timely response to the Board, the alleged violations will be deemed admitted.

b. At the hearing, the Board and Respondent may submit evidence and present oral argument based upon the record in support of their positions. Unless otherwise ordered by the Board, the evidentiary record before the Board shall be limited to evidence relevant to whether Respondent has violated this Stipulation and Consent

Order. At the hearing the facts and substantive matters related to the violations described in Section A shall not be at issue.

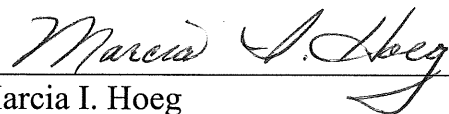
c. At the hearing, the Board may impose additional discipline, which may include the suspension or revocation of Respondent's license, the imposition of fines, the recovery of costs and attorney fees incurred by the Board and/or other conditions or limitations upon Respondent's practice.

E.2. This Stipulation and Consent Order is the resolution of a contested case and is a public record.

E.3. This Stipulation contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representation of any kind, verbal or otherwise.

I have read the above Stipulation fully and have had the opportunity to discuss it with legal counsel. I understand that by its terms I am waiving certain rights accorded me under Idaho law. I understand that the Board may either approve this Stipulation as proposed, approve it subject to specified changes, or reject it. I understand that, if approved as proposed, the Board will issue an Order on this Stipulation according to the aforementioned terms, and I hereby agree to the above Stipulation for settlement. I understand that if the Board approves this Stipulation subject to changes, and the changes are acceptable to me, the Stipulation will take effect and an order modifying the terms of the Stipulation will be issued. If the changes are unacceptable to me or the Board rejects this Stipulation, it will be of no effect.

DATED this 9 day of January, 2008.



Marcia I. Hoeg
Respondent

I recommend that the Board enter an Order based upon this Stipulation.

DATED this 13 day of January, ²⁰⁰⁹~~2008~~.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By Karin Magnelli
Karin Magnelli
Deputy Attorney General

ORDER

Pursuant to Idaho Code § 54-2910, the foregoing is adopted as the decision of the Idaho State Speech and Hearing Services Licensure Board in this matter and shall be effective on the 23rd day of January, 2009. IT IS SO ORDERED.

IDAHO STATE SPEECH AND
HEARING SERVICES LICENSURE BOARD

By Andrew J. Seitz
Andrew J. Seitz, Chair

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on this 23rd day of January, 2009, I caused to be served a true and correct copy of the foregoing by the following method to:

Marcia I. Hoeg
2580 N. Maple Grove Road
Boise, ID 83704

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☒ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☐ Statehouse Mail

Karin Magnelli
Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☒ Statehouse Mail


Tana Cory, Chief
Bureau of Occupational Licenses